



Signed and Filed: March 09, 2010

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 09-32762 SFC
)	
CASIMIRA T. LUMIDAO,)	Chapter 13
)	
)	
)	
)	
Debtor.)	

MEMORANDUM DECISION RE OBJECTION TO CLAIM OF ONEWEST BANK, FSB

The court held a trial on March 9, 2010 regarding Debtor's objection to the secured claim of OneWest Bank, FSB (OneWest). Bert M. Vega appeared for Debtor. Kelly M. Raftery appeared for OneWest. Upon due consideration, and for the reasons stated below, I determine that the objection to claim should be overruled.

In 2005, Debtor obtained a 30-year loan in the amount of \$677,000 secured by her residence. The promissory note (the Note) provides for both an adjustable rate of interest and negative amortization for a limited period of time. The Note provides for an initial required monthly payment of \$2,485. The Note clearly states that this payment may be less than the interest accruing on the loan, and that the principal balance may therefore increase.

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1 The Note also clearly states that once the principal balance
2 reaches 110 percent of the initial principal balance, the required
3 monthly payments will increase to an amount sufficient to amortize
4 the full principal balance over the remaining term of the loan.
5 When Debtor hit the 110 percent limit, OneWest notified her that
6 the required monthly payment increased to \$4,554.

7 Debtor, who is not financially sophisticated, testified that
8 she did not fully understand the negative-amortization and percent-
9 of-principal-limit features of the Note, and thought that her
10 payments would not increase until January 2011. She seeks to have
11 this court determine that the Note is an adhesion contract that
12 should be construed to conform to her expectation that her payments
13 would not increase until 2011.

14 The following principles govern the enforcement of contracts
15 of adhesion under California law. (1) A contract of adhesion is a
16 standard-form contract drafted and imposed by the party of superior
17 bargaining power on a take-it-or-leave-it basis. (2) Courts will
18 review an adhesion contract carefully, and will decline to enforce
19 that contract if it either: (a) leads to an unconscionable result;
20 or (2) if the terms fall outside the reasonable expectations of the
21 weaker party. Contractual terms do not fall outside the reasonable
22 expectations of weaker party simply because that party did not
23 understand them fully; the weaker party must show that she would
24 not have made the contract had she understood its terms. 1 Witkin,
25 Summary of California Law, Contracts §§ 323-325 (10th ed. 2005)

26 I find that the Note is an adhesion contract. I also find
27 that the terms of the Note are not substantively unconscionable.
28 Limiting the amount by which negative amortization increases the

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1 balance due is not unreasonable. Moreover, this is not a situation
2 in which Debtor was induced to refinance on risky terms a home that
3 she had owned for many years and in which she had substantial
4 equity. Debtor purchased the house only two years before obtaining
5 this loan, and introduced no evidence that she ever had any
6 significant equity in the house. Finally, I find that Debtor
7 failed to show that she would not have entered into the contract
8 had she understood its terms. Debtor did not testify that she
9 would not have obtained the loan if she had understood the percent-
10 of-principal limit and known that she would have to make full-
11 amortization payments before 2011. Debtor's argument is that the
12 contract should be construed against OneWest simply because Debtor
13 did not understand it. This is not sufficient, where the loan
14 terms are set forth in language that is plain and unambiguous,
15 where those terms do not work a forfeiture, and where Debtor did
16 not testify that she would not have obtained the loan had she
17 understood its terms.

18 ****END OF MEMORANDUM DECISION****
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